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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,711	06/26/2003	Stephen D. Pacetti	50623.266	5769

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EXAMINER	
AHMED, SHEEBA	
ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
09/08/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/606,711	PACETTI, STEPHEN D.	
	Examiner	Art Unit	
	SHEEBA AHMED	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *6/11/08*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10,12-20 and 22-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10,12-20 and 22-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendments and Arguments

1. Amendments to claims 1, 6, 7, 9, 12, 13, 16, 17, 19, and 22 have been entered in the above-identified application. Claims 11 and 21 are cancelled. **Claims 1-10, 12-20, and 22-29 are now pending.**

Applicant's arguments filed on June 11, 2008, with respect to the rejection of claims 1-10, 12-20, and 22-29 under 35 U.S.C. 102(e) as being anticipated by Hossainy et al. (US 6,926,919 B1) have been fully considered and are persuasive. Applicants submit that a § 131 Declaration filed on July 11, 2006 should have overcome the Hossainy reference. The rejection of claims 1-10, 12-20, and 22-29 under 35 U.S.C. 102(e) as being anticipated by Hossainy et al. (US 6,926,919 B1) has been withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of Hossainy et al. (US 6,926,919 B1). Any inconvenience to the Applicants is regretted.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-10, 12-20, and 22-29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, and 6-8 of U.S. Patent No. 6,926,919 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claims 1-2 of U.S. Patent No. 6,926,919 B1 recites a method for fabricating a coating for an implantable medical device, comprising: (a) forming a coating on the device, the coating including a blend of a hydrophobic polymer and a hydrophilic polymer; and (b) treating the coating with a stimulus for enriching a region close to or at the outer surface of the coating with the hydrophilic polymer, wherein the hydrophilic polymer has a Hildebrand solubility parameter higher than about 11 $(cal/cm^3)^{1/2}$, wherein the hydrophobic polymer is selected from a group consisting of poly(ethylene-co-vinyl alcohol), poly(butyl methacrylate), poly(ethyl methacrylate), poly(ethyl methacrylate-co-butyl methacrylate), poly(vinylidene fluoride), poly(vinylidene fluoride-co-hexafluoro propene), and blends thereof. Claims 6-8 recite that the implantable medical device is a stent, the hydrophilic polymer is selected from a group consisting of poly(ethylene glycol), polyvinyl pyrrolidone) and blends thereof, and the

mass ratio between the hydrophilic polymer and the hydrophobic polymer in the blend is between about 1:100 and about 1:9.

The claims of U.S. Patent No. 6,926,919 B1 fail to recite that the mass ratio of the hydrophobic polymer and the hydrophilic polymer in the first layer is between about 49:1 and about 19:1.

However, it would have been obvious to one having ordinary skill in the art to optimize the mass ratio of the hydrophobic polymer and the hydrophilic polymer in the first layer given that U.S. Patent No. 6,926,919 B1 claims that the mass ratio between the hydrophilic polymer and the hydrophobic polymer in the blend is between about 1:100 and about 1:9 and further given that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHEEBA AHMED whose telephone number is (571)272-1504. The examiner can normally be reached on Monday-Friday from 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sheeba Ahmed/
Primary Examiner, Art Unit 1794